to the prevention of the fraudulent acts of Bonner in respect to this duty. It is no answer to say that he might have done the same secretly. It could as well be said that he might have done it by a burglary or other crime. The point is whether care and vigilance would have prevented what was done. It is said that this is a hard case for the stockholders, who have also been robbed by the acts of Bonner. This is doubtless true. It is a question as to which among innocent persons is to bear the loss of fraud and crime. The stockholders established an institution, chose their officers and invited the public to deal with them. The defendant was a dealer and had a right to rely upon the vigilance and good faith of those whom the stockholders had intrusted with the management of the corporation, and while regretting the common misfortune, we think under the circumstances of this case as proved and found, that both upon legal and equitable principles the position of the defendant is superior to that of the stockholders.

The judgment must be affirmed.

RECENT ENGLISH DECISIONS.

High Court of Justice. Court of Appeal.

HOUSEHOLD FIRE AND INSURANCE CO. *v.* GRANT.

Where an offer has been made to a person who is expressly or by implication authorized to accept such offer by post, then, as soon as a letter containing an acceptance is posted, correctly addressed to the offerer, the contract is complete, even though such letter never reaches the offerer.

G. applied by letter, on the 30th September 1874, for one hundred shares in the plaintiff company, and on the 20th October, a letter allotting one hundred shares to him was duly addressed and posted by the company. The letter never reached G. *Held* (per THESIGER and BAGGALLAY, L. JJ., BRAMWELL, L. J., dissenting), that the contract to take the shares was complete when the letter of allotment was posted, and that G. was liable to pay the calls made on the shares.

British and American Telegraph Co. v. *Colson*, Law Rep. 6 Exch. 108, overruled.

THIS was an appeal by defendant from the judgment of LOPES, J. (reported 40 Law Times Rep., N. S. 426).

The facts were that the defendant, on the 30th September 1874, applied by letter for one hundred shares in the plaintiff company, that the shares were allotted, and that an allotment letter was posted to him on the 20th October 1874, directed to the address

given by him. The defendant said that the allotment letter had never been received by him, and that he had heard nothing of the shares until March 1877, when he received a letter demanding 95*l.*, the amount of a call on one hundred shares. This the defendant refused to pay, denying that he was a shareholder, and on that the action was brought by plaintiffs. The jury found (1) that the allotment letter of the 20th October 1874, had been posted; and (2) that the defendant had never received it. On these findings, LOPES, J., on consideration, gave judgment for the plaintiffs.

THESIGER, L. J.—In this case the defendant made an application for shares in the plaintiff company, under circumstances from which we must imply that he authorized the company, in the event of their allotting to him the shares applied for, to send the notice of allotment by post. The company did allot him the shares, and duly addressed to him and posted a letter containing the notice of allotment; but upon the finding of the jury, it must be taken that the letter never reached its destination. In this state of circumstances, LOPES, J., has decided that the defendant is liable as a shareholder. He based his decision mainly upon the ground that the point for his consideration was covered by authority binding upon him, and I am of opinion that he did so rightly, and that it is covered by authority equally binding upon this court. *Dunlop* v. *Higgins*, 1 H. L. Cas. 381, is of course the leading case on the subject. It is true that Lord COTTENHAM might have decided that case without deciding the point in this. But it appears to me equally true that he did not do so, and that he preferred to rest, and did rest, his judgment as to one of the matters of exception before him upon a principle which embraces and governs the present case. If so, this court is as much bound to apply that principle, constituting as it did a *ratio decidendi*, as it is to follow the decision itself. The exception was that the Lord Justice General directed the jury in point of law, that if the pursuers posted their acceptance of the offer according to the usages of trade, they were not responsible for any casualties in the post-office establishment. This direction was wide enough in its terms to include the case of the acceptance never being delivered at all, and Lord COTTENHAM, in expressing his opinion that it was not open to objection, did so after putting the case of a letter containing a notice of dishonor being posted to the holder of a bill of exchange in proper time, in

which case he said, at page 399, "Whether that letter be delivered or not is a matter quite immaterial, because for accidents happening at the post-office he is not responsible."

In short, Lord COTTENHAM appears to me to have held, that as a rule, a contract formed by correspondence through the post is complete as soon as the letter accepting an offer is put into the post, and is not put an end to in the event of the letter never being delivered. My view of the effect of *Dunlop* v. *Higgins*, *supra*, is that taken by JAMES, L. J., in *Harris's Case*, Law Rep. 7 Ch. Ap. 587, where, at p. 592, he speaks of the former case as "a case which is binding upon everybody, and in which every principle argued before us was discussed at length by the Lord Chancellor in giving judgment, in which he (meaning the Lord Chancellor) arrived at the conclusion, that the posting of the letter of acceptance is the completion of the contract; that is to say, the moment one man has made the offer and the other has done something binding himself to that offer, then the contract is complete, the instant of completion being that in which the letter accepting the offer is delivered to the post and neither party can afterwards escape from it." MELLISH, L. J., also took the same view. He says (at p. 595), "in *Dunlop* v. *Higgins*, the question was directly raised whether the law was truly expounded in the case of *Adams* v. *Lindsell*, 1 B. & Ald. 681, and the House of Lords approved of the ruling in that case. Lord Chancellor COTTENHAM said, in the course of his judgment, that in the case of a bill of exchange, notice of dishonor given by putting a letter into the post at the right time had been held quite sufficient, whether that letter was delivered or not, and he referred to *Stocken* v. *Collins*, 7 M. & W. 515, on that point, he being clearly of opinion that the rule as to accepting a contract was exactly the same as the rule as to sending notice of dishonor of a bill of exchange. He then referred to the case of *Adams* v. *Lindsell*, *supra*, and quoted the observation of Lord ELLENBOROUGH. That case, therefore, appears to me to be a direct decision that the contract is made from the time when it is accepted by post."

Leaving *Harris's Case*, for the moment, I turn to *Duncan* v. *Topham*, 8 C. & B. 225, in which CRESSWELL, J., told the jury, that if the letter accepting the contract was put into the post-office and lost by the negligence of the post-office authorities, the contract would nevertheless be complete, and both he and WILDE, C.

J., and MAULE, J., seem to have understood this ruling to have been in accordance with Lord COTTENHAM'S opinion in *Dunlop* v. *Higgins*. That opinion, therefore, appears to me to constitute an authority directly binding on us. But if *Dunlop* v. *Higgins* were out of the way, *Harris's Case*, *supra*, would still go far to govern the present. There it was held that the acceptance of the offer at all events binds both parties from the time of the acceptance being posted, and so as to prevent any retraction of the offer being of effect after the acceptance has been posted. Now, whatever in abstract discussion may be said as to the legal notion of its being necessary, in order to the effecting of a valid and binding contract, that the minds of the parties should be brought together at one and the same moment, that notion is practically the foundation of English law upon the subject of the formation of contracts. Unless, therefore, a contract constituted by correspondence is absolutely concluded at the moment that the continuing offer is accepted by the person to whom the offer is addressed, it is difficult to see how the two minds are to be brought together at one and the same moment. This was pointed out by Lord ELLENBOROUGH in the case of *Adams* v. *Lindsell*, *supra*, which is recognised authority upon this branch of law. But on the other hand, it is a principle of law, as well established as the legal notion to which I have referred, that the minds of the two parties must be brought together by mutual communication. An acceptance which only remains in the breast of the acceptor, without being actually or by legal implication communicated to the offerer, is no binding acceptance. How then are these elements of law to be harmonized in the case of contracts formed by correspondence through the post? I see no better mode than that of treating the post-office as the agent of both parties, and it was so considered by Lord ROMILLY in *Hebb's Case*, Law Rep. 4 Eq. 9, where in the course of his judgment he said: "*Dunlop* v. *Higgins* decides that the posting of a letter accepting an offer constituted a binding contract, but the reason of that is, that the post-office is the common agent of both parties." Also, ALDERSON, B., in *Stocken* v. *Collin*, *supra*, a case of notice of dishonor, and the case referred to by Lord COTTENHAM, says, "If the doctrine that the post-office is only the agent for the delivery of the notice were correct, no one could safely avail himself of that mode of transmission."

But if the post-office be such common agent, then it seems to me

to follow that, as soon as the letter of acceptance is delivered to the post-office, the contract is made as complete and final and absolutely binding as if the acceptor had put his letter into the hands of a messenger, sent by the offerer himself as his agent, to deliver the offer and receive the acceptance. What other principle can be adopted short of holding that the contract is not complete by acceptance until and except from the time that the letter containing the acceptance is delivered to the offerer, a principle which has been distinctly negatived? This difficulty was attempted to be got over in *The British and American Telegraph Company* v. *Colson*, Law Rep. 6 Exch. 108, which was a case directly on all-fours with the present, and in which KELLY, C. B., at page 115, is reported to have said, "It may be that in general, though not in all cases, a contract takes effect from the time of acceptance, and not from the subsequent notification of it. As in the case now before the court, if the letter of allotment had been delivered to the defendant in the due course of the post, he would have become a shareholder from the date of the letter, and to this effect is *Potter* v. *Sanders*, 6 Hare 1. And hence, perhaps, the mistake has arisen that the contract is binding upon both parties at the time when the letter is written and put into the post, although never delivered, whereas, although it may be binding from the time of acceptance, it is only binding at all when afterwards duly notified." But, with deference, I would ask how a man can be said to be a shareholder at a time before he was bound to take any shares; or, to put the question in the form in which it was put by MELLISH, L. J., in *Harris's Case*, how there can be any relation back in a case of this kind as there may be in bankruptcy. "If," as the Lord Justice said, "the contract after the letter has arrived in time is to be treated as having been made from the time the letter is posted, the reason is that the contract was actually made at the time when the letter was posted." The principles laid down in *Harris's Case*, as well as in *Dunlop* v. *Higgins*, can really not be reconciled with the decision in *The British and American Telegraph Company* v. *Colson*. JAMES, L. J., in the passage I have already quoted, affirms the proposition that when once the acceptance is posted neither party can afterwards escape from the contract, and refers with approval to *Hebb's Case*, *supra*. There a distinction was taken by the Master of the Rolls, that the company chose to send the letter of allotment to their own agent, who was not authorized by the applicant for shares to receive

it on his behalf, and who never delivered it; but he at the same time assumed that if, instead of sending it through an unauthorized agent, they had sent it through the post-office, the applicant would have been bound, although the letter had never been delivered. MELLISH, L. J., really goes as far, and states forcibly the result in favor of this view. The mere suggestion thrown out at the close of judgment, when stopping short of actually overruling the decision in *The British and American Telegraph Company* v. *Colson*, Law Rep. 6 Ex. 108, that although a contract is complete when the letter accepting an offer is posted, yet it may be subject to a condition subsequent that if the letter does not arrive in due course of post, then the parties may act on the assumption that the offer has not been accepted, can hardly, when contrasted with the rest of his judgment, be said to represent his own opinions as to the law upon the subject. "The contract," as he says, "is actually made when the letter is posted." The acceptor in posting the letter has, to use the language of Lord BLACKBURN, in *Brogden* v. *The Metropolitan Railway Company*, L. Rep. 2 App. Cas. 666, "put it out of his control, and done an extraneous act which clenches the matter, and shows beyond all doubt that each side is bound." How then can a casualty in the post, whether resulting in delay, which in commercial transactions is often as bad as no delivery, or in non-delivery, unbind the parties or unmake the contract? To me it appears that in practice a contract complete upon the acceptance of an offer being posted, but liable to be put an end to by an accident in the post, would be more mischievous than a contract only binding upon the parties to it upon the acceptance actually reaching the offerer, and I can see no principle of law from which such an anomalous contract can be deduced. There is no doubt that the implication of a complete, final and absolutely binding contract being formed as soon as the acceptance of an offer is posted, may in some cases lead to inconvenience and hardship. But such there must be at times in any view of the law. It is impossible in transactions which pass between parties at a distance, and have to be carried on through the medium of correspondence, to adjust conflicting rights between innocent parties, so as to make the consequences of mistake on the part of a mutual agent fall equally upon the shoulders of both. At the same time I am not prepared to admit that the implication in question will lead to any great or general inconvenience or hardship. An offerer, if he choose, may always make the formation of the contract

which he proposes dependent upon the actual communication to himself of the acceptance. If he trusts to the post, he trusts to a means of communication which as a rule does not fail, and if no answer to his offer is received by him, and the matter is of importance to him, he can make inquiries of the person to whom his offer was addressed. On the other hand, if the contract is not finally concluded except in the event of the acceptance actually reaching the offerer, the door would be opened to the perpetration of much fraud, and putting aside this consideration, considerable delay in commercial transactions, in which dispatch is, as a rule, of the greatest consequence, would be occasioned, for the acceptor would never be entirely safe in acting upon his acceptance until he had received notice that his letter of acceptance had reached its destination. Upon a balance of convenience and inconvenience, it seems to me, applying with slight alterations the language of the Supreme Court of the United States in *Tayloe* v. *The Merchants' Fire Ins. Co.*, 9 How. S. C. U. S. 390, more consistent with the acts and declarations of the parties in this case to consider the contract complete and absolutely binding on the transmission of the notice of allotment through the post, as the medium of communication which the parties themselves contemplated, instead of postponing its completion till the notice had been received by the defendant. Upon principle, therefore, as well as authority, I think that the judgment of LOPES, J., was right, and should be affirmed, and that this appeal should, therefore, be dismissed.

BAGGALLAY, L. J., delivered a concurring opinion.

BRAMWELL, L. J., dissenting.—The question in this case is not whether the post-office was a proper medium of communication from the plaintiff to the defendant. There is no doubt that it is so in all cases where personal service is not required. It is an ordinary mode of communication, and every person who gives any one the right to communicate with him gives the right to communicate in an ordinary, and so in this way; and to this extent, that if an offer were made by letter in the morning to a person at a place within half an hour's railway journey of the offerer, I should say that an acceptance by post, though it did not reach the offerer until the next morning, would be in time. Nor is the question whether, when the letter reaches an offerer, the latter is bound and

the bargain made from the time the letter is posted or dispatched, whether by post or otherwise. The question in this case is different. I will presently state what in my judgment it is. Meanwhile, I wish to mention some elementary propositions, which, if carefully borne in mind, will assist in the determination of this case. First, where a proposition to enter into a contract is made and accepted, it is necessary, as a rule, to constitute the contract that there should be a communication of that acceptance to the proposer (per BRYAN, C. J., Year Book, 17 Ed. IV., fo. 1 and 2, plac. 2, cited in Blackburn on Sales, p. 189). Secondly, that the present case is one of proposal and acceptance. Thirdly, that as a consequence of or involved in the first proposition, if the acceptance is written or verbal—*i. e.*, is by letter or message—as a rule, it must reach the proposer, or there is no communication, and so no acceptance of the offer. Fourthly, that if there is a difference where the acceptance is by a letter sent through the post, which does not reach the offerer, it must be by virtue of some general rule or some particular agreement of the parties. As, for instance, there might be an agreement that the acceptance of the proposal may be by sending the article offered by the proposer to be bought, or hanging out a flag or sign, to be seen by the offerer as he goes by, or leaving a letter at a certain place, or any other agreed mode, and in the same way there might be an agreement that dropping a letter in a post pillar-box or other place of reception should suffice. Fifthly, that as there is no such special agreement in this case, the defendant, if bound, must be bound by some general rule which makes a difference where the post-office is employed as the means of communication. Sixthly, that if there is any such general rule applicable to the communication of the acceptance of offers, it is equally applicable to all communications that may be made by post; because, as I have said, the question is not whether this communication may be made by post. If, therefore, posting a letter which does not reach is a sufficient communication of acceptance of an offer, it is equally a communication of everything else which may be communicated by post, *e. g.*, a notice to quit. It is impossible to hold, if I offer my landlord to sell him some hay, and he writes accepting my offer, and in the same letter gives me notice to quit, and posts his letter, which, however, does not reach me, that he has communicated to me his acceptance of my offer but not his notice to quit. Suppose a man has paid his tailor by check or bank note,

and posts a letter containing a check or bank note to his tailor, which never reaches, is the tailor paid? If he is, would he be if he had never been paid before in that way? Suppose a man is in the habit of sending checks or bank notes to his banker by post, and posts a letter containing checks and bank notes, which never reaches, is the banker liable? Would he be if this was the first instance of a remittance of the sort? In the case I have supposed the tailor and banker may have recognised the mode of remittance by sending back receipts, and by putting the money to the credit of the remitter. Are they liable with that? Would they be liable without it? The question then is, is posting a letter which is never received a communication to the person addressed, or an equivalent, or something which dispenses with it? It is for those who say it is to make good their contention. I ask why is it?

My answer beforehand to any argument that may be urged is, that it is not a communication, and that there is no agreement to take it as an equivalent for or to dispense with a communication; that those who affirm the contrary say the thing which is not, that if BRYAN, C. J., had had to adjudicate on the case, he would deliver the same judgment as that reported (*vide supra*). That because a man who may send a communication by post or otherwise sends it by post, he should bind the person addressed though the communication never reaches him, while he would not so bind him if he had sent it by hand, is impossible. There is no reason in it. It is simply arbitrary. I ask whether any one who thinks so is prepared to follow that opinion to its consequences? Suppose the offer is to sell a particular chattel, and the letter accepting it never arrives, is the property in the chattel transferred? Suppose it is to sell an estate or grant a lease, is the bargain completed? The lease might be such as not to require a deed. Could a subsequent lessee be ejected by the would-be acceptor of the offer because he had posted a letter? Suppose an article is advertised at so much, and that it will be sent on receipt of a post-office order, is it enough to post the letter? If the word "receipt" is relied on, is it really meant that that makes a difference? If it should be said, Let the offerer wait, the answer is, Maybe he will lose his market meanwhile. Besides, his offer may be by advertisement to all mankind. Suppose a reward for information, and information does not reach, and some one else gives it and is paid, is the offerer liable to the first man?

It is said that a contrary rule would be hard on the would-be acceptor, who may have made his arrangements on the footing that the bargain was concluded. But to hold as contended would be equally hard on the offerer, who may have made his arrangements on the footing that his offer was not accepted. His non-receipt of any communication may be attributable to the person to whom it was made being absent. What is he to do, but to act on the negative that no communication has been made to him? Further, the use of the post-office is no more authorized by the offerer than the "send an answer by hand," and all these hardships would befall the person posting the letter if he sent it by hand. Doubtless in that case he would be the person to suffer if the letter did not reach its destination. Why should his sending it by post relieve him of the loss and cast it on the other party? It was said, if he sends it by hand it is revocable, but not if he sends it by post, which makes the difference. But it is revocable when sent by post; not that the letter can be got back, but that its arrival might be anticipated by hand or telegram, and there is no case to show that such anticipation would not prevent the letter from binding. It would be a most alarming thing to say it would, and that a letter honestly but mistakenly written and posted must bind the writer, if hours before its arrival he informed the person addressed that it was coming, but was wrong and recalled. Suppose a false but honest character given, and the mistake found out after the letter posted, and notice that it was wrong given to the person addressed. Then, as was asked, is the principle to be applied to telegrams? Further, it seems admitted that, if the proposer said, "Unless I hear from you by return of post the offer is withdrawn," the letter accepting it must reach him to bind him. There is indeed a case recently reported in the *Times*, before the Master of the Rolls, where the offer was to be accepted within fourteen days, and it is said to have been held that it was enough to post the letter on the 14th, though it would and did not reach the offerer until the 15th. Of course there may have been something in that case not mentioned in the report; but as it stands it comes to this, that if an offer is to be accepted in June, and there is a month's post between the places, posting the letter on the 30th June will suffice, though it does not reach till the 31st July; but that case does not affect this. There the letter reached: here it has not. If it is not admitted that "unless I hear by return of post the offer is withdrawn" makes

the receipt of the letter a condition, it is to say an express condition goes for naught. If it is admitted, is it not what every letter says? Are there to be fine distinctions, such as if the words are "unless I hear from you by return of post," &c., it is necessary that the letter should reach him, but "let me know by return of post," it is not, or if in that case it is, yet it is not where there is an offer without those words? Lord BLACKBURN said that MELLISH, L. J., actually stated that where it is expressly or impliedly stated in the offer "You may accept the offer by posting a letter," the moment you post this letter the offer is accepted. I agree, and the same thing is true of any mode of acceptance offered with the offer and acted on, as firing a cannon, sending off a rocket, "give your answer to my servant, the bearer." Lord BLACKBURN was not dealing with the question before us; there was no doubt in the case before him that the letters had reached. As to the authorities, I shall not re-examine those in existence before *The British and American Telegraph Company* v. *Colson*, *supra*. But I wish to say a word as to *Dunlop* v. *Higgins*, *supra*, as the whole difficulty has arisen from some expressions in that case. Mr. *Finlay's* argument and reference to the case when originally in the Scotch court has satisfied me that *Dunlop* v. *Higgins*, *supra*, decided nothing contrary to the defendant in this case. MELLISH, L. J., in *Harris's Case*, *supra*, says so at p. 596 of the Law Reports. "That case is not a direct decision on the point before us." It is true he adds that he has great difficulty in reconciling the case of *The British and American Telegraph Company* v. *Colson*, *supra*, with *Dunlop* v. *Higgins*, *supra*. I do not share that difficulty. I think that they are perfectly reconcilable, and that I have shown so. Where a posted letter arrives the contract is complete on the posting. So where a letter sent by hand arrives, the contract is complete on the writing and delivery to the messenger. Why not? All the extraordinary and mischievous consequences which the Lord Justice points out might happen if the law were otherwise when a letter is posted, would equally happen where it is sent otherwise than by the post. He adds that, "The question before the House in *Dunlop* v. *Higgins*, *supra*, was whether the ruling of the Lord Justice Clerk, was correct," and they held it was. Now, Mr. *Finlay* showed very clearly that the Lord Justice decided nothing inconsistent with the judgment in *The British and American Telegraph Co.* v. *Colson*, *supra*. Since that case there have

been two before MALINS, V. C., in the earlier of which he thought it "reasonable" and followed it. In the other, because the Lord Justices had in *Harris's Case*, *supra*, "thrown cold water upon it," he appears to have thought it not reasonable. He says, "Suppose the sender of a letter says, 'I make you an offer, let me have an answer by return of post.' By return the letter is posted, and A. has done all that the person making the offer requests." Now that is precisely what he has not done. He has not let him "have an answer." He adds, "there is no default on his part. Why should he be the only person to suffer?" Very true. But there is no default in the other, and why should he be the only person to suffer?

The only other authority is the expression of opinion of LOPES, J., in the present case. He says, the proposer may guard himself against hardship by making the proposal expressly conditional on the arrival of the answer within a definite time. But it need not be express nor within a definite time. It is enough that it is to be inferred that it is to be, and if it is to be it must be within a reasonable time. The mischievous consequences he points out do not follow from that which I am contending for. I am at a loss to see how the post-office is the agent for the parties. What is the agency? As to the sender it is merely to receive. But suppose it is not an answer but an original communication, what then? Does the extent of the agency of the post office depend on the contents of the letter? But if the post-office is the agent of both parties then the agent of both parties has failed in his duty, and to both. Suppose the offerer says, "My offer is conditioned on your answer reaching me." Of whom is the post-office the agent then? But how does the offerer make the post-office his agent, because he gives the acceptor an option of using that or any other means of communication? I am of opinion that this judgment should be reversed. I am of opinion that there was no bargain between these parties to allot and take shares; that to make such bargain there should have been an acceptance of the defendant's offer, and a communication to him of that acceptance; that there was no such communication, and that posting a letter does not differ from other attempts at communication in any of its consequences, save that it is irrevocable as between the poster and the post-office. The difficulty has arisen from a mistake as to what was decided in *Dunlop* v. *Higgins*, *supra*, and from supposing that because there is a

right to have recourse to the post as a means of communication, that right is attended with some peculiar consequences, and also from supposing that because if the letter reaches, it binds from the time of posting, it also binds though it never reaches. Mischief may arise if my opinion prevails. It probably will not. As so much has been said on the matter, that principle has been lost sight of, I believe equal if not greater will, if it does not prevail. I believe that the latter will be only obviated by the rule being made nugatory, by every prudent man saying, "your answer by post is only to bind if it reaches me." But the question is not to be decided on these considerations. What is the law? What is the principle? If BRYAN, C. J., had had to decide this, a public post being instituted in his time, he would have said, the law is the same now there is a post as it was before, namely, a communication to affect a man must be a communication, *i. e.*, must reach him.

Judgment affirmed.

Notwithstanding the dissenting opinion of BRAMWELL, L. J., the doctrine of this case is believed to be a correct expression of the law upon the point involved, both in England and the United States. The cases upon the subject in this country are almost unanimous in stating the rule to be that when an offer is made by letter the contract is considered complete as soon as the letter of acceptance has been posted (and not from the time of its receipt) provided it has been posted in a reasonable time after the reception of the offer and before notice of the withdrawal of the offer. See *Chiles* v. *Nelson*, 7 Dana 281; *Abbott* v. *Shepard*, 48 N. H. 14; *Stockham* v. *Stockham*, 32 Md. 196; *Bryant* v. *Booze*, 55 Geo. 438; *Washburn* v. *Fletcher*, 42 Wis. 152; *Vassar* v. *Camp*, 11 N. Y. 441; s. c. 14 Barb. 341; *Levy* v. *Cohen*, 4 Ga. 1; *Wheat* v. *Cross*, 31 Md. 103; *Tayloe* v. *Insurance Co.*, 9 How. 390; *Hamilton* v. *Insurance Co.*, 5 Penn. St. 339, per GIBSON, C. J.; *Mactier* v. *Frith*, 6 Wend. 103. The opposing case of *McCulloch* v. *The Eagle Ins. Co.*, 1 Pick. 283, is against the whole current of authority, both English and American, and may be considered as overruled. See *Hallock* v. *Commercial Ins. Co.*, 26 N. J. Law 268, 283.

The rule has also been held to be the same in this country as well as in England, notwithstanding the letter of acceptance was never received: *Washburn* v. *Fletcher* and *Vassar* v. *Camp*, *supra*.

The rule appears to be the same also in cases where the contract is made by telegraph: *Minn. Oil Co.* v. *Collier Lead Co.*, 4 Dill. 431; *Trevor* v. *Wood*, 36 N. Y. 307. And an agreement to communicate by telegraph constitutes no warranty by either party that the telegram shall be duly received: *Trevor* v. *Wood*, *supra*.

There will be no contract, however, in the case of a proposal by letter containing no limitation of time, unless the letter of acceptance is posted within a reasonable time after the reception of the offer: *Martin* v. *Black*, 21 Ala. 721; *Chicago & G. E. Railway Co.* v. *Dane*, 43 N. Y. 240; *Averill* v. *Hedge*, 12 Conn. 424. The rule is the same in the case of contracts by telegraph: *Minn. Oil Co.* v. *Collier Lead Co.*, *supra*.

The party making the offer may, however, make it a condition that the pro-

posed contract shall not bind him till he receives notice of acceptance, or unless he receives it by a specified time: *Vassur* v. *Camp*, *supra*. And where the offer requires an answer within a certain time, as "by return mail," the answer and acceptance must be posted within the limited time in order to constitute a binding contract: *Taylor* v. *Rennie*, 35 Barb. 272; s. c. 22 How. Pr. 101; *Potts* v. *Whitehead*, 20 N. J. Eq. 55; s. c. 23 Id. 512.

The postage must be prepaid, and the mere deposit of a letter of acceptance in the post-office, postage not prepaid, will not be sufficient to constitute a contract: *Britton* v. *Phillips*, 24 How. Pr. 111.

The letter of acceptance must, of course, be properly directed, and if it is addressed to a place where the party to be bound only occasionally resorts, it must be proved to have been received by him: *Potts* v. *Whitehead*, *supra*.

The offer by letter need not in all cases be mailed directly to the person to whom it is made. A proposition to sell, contained in a letter sent by mail to the writer's agent or friend, with a request to communicate it, may, after communication to the person for whom it was intended, be accepted by a written reply from the latter addressed directly to the maker of the proposition; and in such case sending the reply to the post-office through the same agent or friend, first permitting him to read it, and telling him orally that the proposition is accepted, will not prevent the contract from being one made by letter; and the contract will be closed, not from the time of leaving the reply to be carried to the post-office, but from the time of its delivery into the post-office: *Bryant* v. *Booze*, 55 Ga. 438.

In the Scotch case of *Dunmore* v. *Alexander*, 9 Shaw & Dun. 190, the person to whom the offer was made mailed a letter accepting the offer, and subsequently mailed a letter withdrawing his acceptance, both of which letters were received by the party making the offer at the same time, and it was held by a majority of the court that there was no contract. A similar case is cited by Merlin in his Repertoire de Jurisprudence, tit. *Vente*, sect. 1, art. 3, No. 11, where an offer was made by letter to purchase goods on certain conditions. The offer was accepted by letter, but the unconditional acceptance was recalled in a subsequent letter in which certain modifications in the conditions were proposed. Both letters were received by the original maker of the proposition at the same time, and he declined to perform the contract, and it was held that he was not bound to do so, as the second answer to his offer authorized him to consider the acceptance withdrawn: See Benj. on Sales, § 74. The decision in the last case is unquestionably correct, whichever view of the question of the effect of the acceptance is taken; for even though a contract was entered into when the unconditional acceptance was sent, it was competent for the parties to rescind the same, and the withdrawal of the acceptance assented to by the proposer was certainly equivalent to a rescission. But if these cases should, notwithstanding their foreign origin, be considered as authorities for the proposition that there was no contract till the acceptance was made known to the proposer, and no contract in the cases in question, because the communication and withdrawal of the acceptance were simultaneous, it can be successfully replied that they are clearly opposed to the current of authority both in this country and in England. Notwithstanding, however, the fact that the question seems settled upon authority, the dissenting opinion of the learned judge in the principal case will be read with interest as a forcible expression of the arguments in favor of the opposing view.

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